MOHD. SAINUDIN AHMAD

v.

CONSOLIDATED HOTELS LTD. & ANOR.

COURT OF APPEAL, SINGAPORE
LAI KEW CHAI J
CHAN SEK KEONG J
AP RAJAH J
[CIVIL APPEAL NO. 3 OF 1988]
30 DECEMBER 1990

TORT: *Negligence - Injury sustained while working on premises - Occupier's liability - Main contractor - Sub-contractor - Liability of owner - Possession and full control over site - Duty of care - Conditions of building contract.*

The 1st respondent, R1 were the owners of the site and had engaged a main contractor, S, to erect the building under terms of a building contract which incorporated the Standard SIA conditions of contract. R1 gave possession of the vacant site to S to carry out the building works. S invited R2 and his employees to come onto the site as the scaffolding sub-contractors.

The appellant A was an employee of R2 who suffered injuries while working on the construction site on the third floor of the partially completed building.

A obtained judgment against R2 for damages for negligence in failing to provide a safe and proper system of work and exposing him to this risk of damages and injury. However, A's claim for damages for negligence against R1 was dismissed, hence this appeal.

The two issues for the Court were whether:

(a) R1 were occupiers or had control of the site and whether

(b) R1 were liable for S's negligence as the duty of care to A was not delegable.

Held:

[1] R1's supervisors and architects were only there to see that the work was properly done in accordance with the terms of the contract; these activities did not make R1 in law and in fact the occupiers of the site or give them control of the site.

[2] (a) The main contractor S were the occupiers as they had possession and full control over the site - it was they who invited R2 and his employees to come onto the site; the architects were independent contractors and not agents of R1 and any control which they might have by virtue of their position could not be said to be the control of R1;

(b) A was not injured by reason of any defective and unsafe condition of the premises, but either as a result of current operations being contracted on the site or an unsafe system of work;

(c) The evidence established that the current operations were carried out by S. R1, could not be responsible for any negligence arising from these operations as they were not unusually dangerous or extra hazardous;

(d) accordingly, even if R1 were in occupation, they would not be liable on this ground as R1's occupation would not, *ipso facto*, make them liable for the injury to A.

[3] Under clause 8 of the building contract, R1 were entitled to and did discharge their duty of care to third parties who came onto the site by employing S as independent contractors and making them liable in respect of personal injury to any person arising out of or in the course of or by the reason of the carrying out of the works.

[Appeal dismissed.]

Cases referred to:
AMF International Ltd. v. Magnet Bowling [1968] 1 WLR 1028
Ferguson v. Welsh [1987] 1 WLR 1553
Honeywill & Stein v. Larkin Bros [1934] 1 KB 191
Haseldine v. Daw [1941] 2 KB 343
Lembaga Kemajuan Tanah Persekutuan v. Mariam [1984] 1 CLJ (Rep) 197
Wheat v. E. Lacon & Co. Ltd. [1966] 1 All ER 582

For the appellant - Subbiah Pillai
For the respondents - Ranvir Kumar Singh

JUDGMENT

Chan Sek Keong J:

This was an appeal against the judgment of Thean J who dismissed the plaintiff's claim for damages for negligence against the 1st defendants. The grounds relied upon by the plaintiff on appeal were the same as those canvassed before and rejected by Thean J in his judgment: see [1989] 1 MLJ 297. At the conclusion of the hearing before us, we dismissed the appeal.

The plaintiff had obtained judgment against the 2nd defendant for damages for negligence in failing to provide a safe and proper system of work and exposing him to this risk of damage and injury. That judgment had not been satisfied when the action against the 1st defendants was heard.

The facts were not in dispute. The 1st defendants were the owners of the site on which the building now known as Peninsula Plaza stands. They had engaged SA Shee & Co. Pte. Ltd. (SA Shee) as the main contractor to erect the building under the terms of a Building Contract dated 20 October 1976 which incorporated the standard SIA conditions of contract. They gave possession of the vacant site to SA Shee sometime in October 1976 to carry out the building works. M/s. Alfred Wong were appointed by the 1st defendants as architects for the development. The 2nd defendant was the scaffolding sub-contractor of SA Shee. The plaintiff was an employee of the 2nd defendant.

On 8 August 1979, while the plaintiff was working on the construction site, tying poles with rattan on the third floor of the partially completed building, a brick fell from the upper floors and hit him on the head. He sustained serious injuries as a result.

In his statement of claim, the plaintiff averred that the 1st defendants were negligent in the following manner:

(a) Failing to take any or any reasonable care to see that the plaintiff would be reasonably safe in using the said premises.

(b) Exposing the plaintiff, while he was engaged upon the said work, to a risk of damage or injury from falling brick of which they knew or ought to have known.

(c) Failing to take any or any adequate or effective precautions to ensure that the brick from the upper floors of the said premises would not fall and strike the plaintiff.

(d) Causing or permitting the said premises to be or to become or to remain in an unsafe and dangerous state, in that the said brick was likely suddenly to fall therefrom.

Before the Judge, the liability of the 1st defendants was put on two grounds: (1) they were occupiers of or had control of the site in that they had engaged architects, a site engineer and a clerk of works to supervise the construction works and the architects had considerable powers to give instructions to SA Shee in relation to the works under the building contract, including the power to instruct the dismissal of workers; (2) the 1st defendants were liable for the negligence of SA Shee as the duty of care to the plaintiff was one which was not, in the circumstances, delegable.

With respect to the first ground, it was not disputed that the architects had the powers as alleged, and that the 1st defendants had also engaged an engineer on site to supervise the mechanical and electrical works and a clerk of works to look after the building works. Thean J held that these activities did not make the 1st defendants in law and in fact the occupiers of the site or give them control of the site. The 1st defendants' supervisors were only there to see that the work was properly done in accordance with the terms of the contract. He held that the occupiers were SA Shee. We agree with this finding for the reasons given by him. SA Shee were the main contractor in possession of the site. They had possession of and full control over the site and it was they who invited the 2nd defendant and his employees to come onto the site. The architects were independent contractors and not agents of the 1st defendants: see *AMF International Ltd. v. Magnet Bowling* [1968] 1 WLR 1028, and any control which they might have by virtue of their position could not be said to be the control of the 1st defendants.

Counsel for the plaintiff had relied on the decision of the Federal Court in *Lembaga Kemajuan Tanah Persekutuan v. Mariam* [1984] 1 CLJ (Rep) 197 as authority for the proposition that in certain circumstances the owner of land could still be regarded as the occupier. Thean J distinguished the case on grounds which we fully endorse. Counsel for the plaintiff also relied on the following passage in the judgment of Lord Denning in *Wheat v. E. Lacon & Co. Ltd.* [1966] 1 All ER 582, (at p. 595):

> Fourthly, where an owner employed an independent contractor to do work on premises of a structure, the owner was usually still regarded as sufficiently in control of the place as to be under a duty towards all those who might lawfully come there. In some cases he might fulfil that duty by entrusting the work to the independent contractor: see *Haseldine v. Daw & Son. Ltd.* and s. 2(4) of the Act of 1957. In other cases he might only be able to fulfil it by exercising proper supervision himself over the contractor's work, using due diligence himself to prevent damage from unusual danger (see *Thomson v. Cremin* as explained by Lord Reid in *Davie v. New Merton Board Mills Ltd.* But in addition to the owner, the Courts regarded the independent contractor as himself being sufficiently in control of the place where he worked as to owe a duty of care towards all persons coming lawfully there. He was said to be an "occupier" also (see *Hartwell v. Grayson Rollo and Clover Docks Ltd.*), but this is only a particular instance of his general duty of care (see *A.C. Billings & Sons Ltd. v. Riden* per Lord Reid).

In our view, this passage was of no assistance to the plaintiff. We do not think that Lord Denning was stating a principle that in all cases where employers had engaged independent contractors to erect a building for them and for that purpose delivers possession of the site to the contractors, the employers remain as occupiers or in control of the site. We agree with the finding of Thean J that this was a case where the 1st defendants were entitled to and did discharge their duty of care to third parties who come onto the site by employing SA Shee as independent contractors and making them liable in respect of personal injury to

or the death of any person arising out of or in the course of or by the reason of the carrying out of the works: see clause 18 of the Building Contract. This case comes within the principle applied in *Haseldine v. Daw* [1941] 2 KB 343.

With respect to the second ground, Thean J held, and we also agreed with this finding, that the plaintiff was not injured by reason of any defective and unsafe condition of the premises, but either as a result of current operations being conducted on the site or an unsafe system of work which caused the brick to fall. The evidence established that the current operations were then carried out by SA Shee as the building was partially completed. The 1st defendants could not be responsible for any negligence arising from these operations as they were not, unlike those in *Honeywill & Stein v. Larkin Bros* [1934] 1 KB 191, unusually dangerous or extra hazardous. Accordingly, even if the 1st defendants were in occupation, they would not be liable on this ground as the 1st defendants' occupation would not, *ipso facto*, make them liable for the injury to the plaintiff: see the two passages from the judgments of Lord Keith and Lord Goff in *Ferguson v. Welsh* [1987] 1 WLR 1553, which were relied upon by Thean J. If the injury arose as a result of an unsafe system of work, then, in the words of Lord Keith in *Ferguson's* case (at p. 1560):

> It would not ordinarily be reasonable to expect an occupier of premises having engaged a contractor whom he has reasonable grounds for regarding as competent, to supervise the contractor's activities in order to ensure that he was discharging his duty to his employees to observe a safe system of work. In special circumstances, on the other hand, where the occupier knows or has reason to suspect that the contractor is using an unsafe system of work, it might well be reasonable for the occupier to take steps to see that the system was made safe.

For the reasons given above, we dismissed the appeal with costs.

Also found at [1991] 1 CLJ 848